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has been declared characteristic of a non-continuous easement. *Polden v. v. Bastard*, 4 Best & S. 527, L. R. 1 Q. B. 156; (but compare *Brown v. Alabaster*, L. R. 37 Ch. D. 490); *Morgan v. Meuth*, 60 Mich. 238; *Tooth v. Bryce*, *supra*; *Oliver v. Pitman*, 98 Mass. 46. In support of the principal case, *Foote v. Yarlott*, *supra*.

EVIDENCE—INVOLUNTARY CONFESSION AS IMPEACHING EVIDENCE.—In a prosecution for murder the defendant took the stand as a witness in his own behalf. For the purpose of impeachment the prosecuting attorney was permitted to cross-examine the accused as to the contents of a written involuntary confession, made by him while in the custody of the officers making the arrest. *Held*, this was error because an involuntary confession of guilt is incompetent for any purpose. *Jones v. State* (Neb. 1914) 149 N. W. 327.

The decisions on this point are very few and about evenly divided. In accord with the principal case, and holding that an involuntary confession cannot be used for any purpose whatever, not even to impeach the defendant as a witness, are *Shepherd v. State*, 88 Wis. 185; *Harrold v. Oklahoma*, 169 Fed. 47; *People v. Yeaton*, 75 Cal. 415; *State v. Steeves*, 29 Or. 85; *Morales v. State*, 36 Tex. Crim. 234. These courts argue that to admit in evidence an involuntary and therefore inadmissible confession for the purpose of impeaching the accused is a mere subterfuge, unreasonable and unjust. Because the impeaching evidence shows guilt it is doubtful if the jury will restrict it to its legitimate use of affecting credibility only. As stated in *Shepherd v. State*, *supra* "The object is to get the confession in evidence. It cannot be done directly but it can be done indirectly. It cannot be used to convict but it can be used to contradict and in that way it is used to convict him all the same." Another line of authority holds that an involuntary confession may be used to impeach the accused when the latter testifies, on the ground that by availing himself of the right to testify he thereby submits himself to the same tests of trustworthiness, and the same rules of cross-examination as apply to other witnesses, and the fact that evidence is admissible for one purpose should not exclude it because it would be inadmissible for another purpose. *Commonwealth v. Tolliver*, 119 Mass. 313; *Hicks v. State*, 99 Ala. 169; *State v. Broadbent*, 27 Mont. 342. As a matter of strict legal theory the latter view would seem to be sound, because the involuntary confession is not used as substantive evidence, for the purpose of proving the truth of the facts stated, but rather to show that the accused made inconsistent and contradictory statements—whether they be true or false—which have a bearing on his credibility. Since the accused cannot be compelled to testify at all, yet if he does it is not unfair to require him to submit to the rules governing other witnesses. *Commonwealth v. Bonner*, 97 Mass. 587; *People v. Hickman*, 113 Cal. 80; *People v. Casey*, 72 N. Y. 393; *State v. Beaty*, 25 Mo. App. 214; *Yanks v. State*, 51 Wis. 464; *Boyle v. State*, 105 Ind. 464; *Fitzpatrick v. U. S.*, 178 U. S. 304.

EVIDENCE—JUDICIAL NOTICE OF LOCAL OPTION ELECTION.—In a prosecution for an unlawful sale of liquor under an act providing for the calling of an election in any city or town to determine by majority vote whether the

inhabitants thereof desired to license the sale of alcoholic liquors therein, the court instructed the jury as matter of law that a certain city was "no-license" territory by reason of an election, though there was no evidence on the subject. *Held*, reversible error; the court cannot take judicial notice of such elections and their result. *People v. Mueller*, (Cal. 1914) 143 Pac. 748.

It has been held in several jurisdictions that courts cannot take judicial notice of the result of an election held under a local option law, but that the fact of such election must be established by evidence. *Grider v. Tally*, 77 Ala. 422; *Norton v. State*, 65 Miss. 297; *Gue v. City*, 53 Ore. 282; *Craddick v. State*, 48 Tex. Cr. R. 385. Other jurisdictions have adopted a contrary rule: *Comps v. State*, 81 Ga. 780; *Savage v. Com.*, 84 Va. 582. Many cases, some of them approving the one rule or the other, may be distinguished on the particular statutes involved, as *State v. Schmits*, 19 Idaho 566, holding that the court will take judicial notice, since the statute provides that the state need not prove facts showing a majority vote; *People v. Murphy*, 93 Mich. 41, holding that the matter is one of fact to be proved in the way prescribed by the statute; and, perhaps, the principal case, where the statute provided that the record of the governing body of the city should be *prima facie* evidence of the result of the election, thus indicating that it was a matter to be proved as a fact. Other cases have held that the sufficiency of the evidence (consisting of records of the election) is for the court and cannot be disputed by evidence as to irregularity in the election, in collateral proceedings. *State v. O'Brien*, 35 Mont. 482; *Crouse v. State*, 57 Md. 327. The latter case is frequently cited as authority for the holding that courts will take judicial notice of the result of such elections; it would seem rather to hold that certain evidence to be offered to the court is made conclusive in collateral proceedings and cannot be disputed by other evidence offered to the jury.

EVIDENCE—JURORS TASTING AND SMELLING INTOXICATING LIQUORS.—Defendant was prosecuted for selling liquor in violation of the prohibitory liquor law. At the trial two bottles of liquor found on the person of the defendant at the time of his arrest, and one which he had just sold, were introduced into evidence. The court upon the request of the jury, neither party objecting, permitted the bottles to be taken to the jury room, where the jurors opened one bottle and tasted and smelled of the contents. *Held*, no prejudicial error, since both parties admitted the bottles contained whiskey, and neither objected to the jury having them. *State v. Watson* (Kan. 1914) 142 Pac. 956.

Whether an exhibit properly in evidence may be taken to the jury room for inspection and examination by the jury, is a matter within the sound discretion of the trial judge in his control over the deliberations of the jury. *State v. Shaw*, 73 Vt. 149; *Sawyer v. Garcelon*, 63 Me. 25; *Starke v. Wolf*, 90 Wis. 434; *People v. Hughson*, 154 N. Y. 153; *Campbell v. State*, 23 Ala. 83; *Tabor v. Judd*, 62 N. H. 288. Exhibits not properly in evidence should be excluded from the jury room. *In Re Barney's Will*, 71 Vt. 217; *Gable v. Rauch*, 50 S. C. 95; *State Bank of Tabor v. Brewer*, 100 Ia. 576; *Yates v. People*, 38 Ill. 527. In Kansas it is held error to allow the jury, in